

**RIGHT TO KNOW ADVISORY COMMITTEE
PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE**

DRAFT AGENDA
September 13, 2012
9:00 a.m.
Room 438, State House, Augusta

Convene

1. Welcome and Introductions
Shenna Bellows, Chair
2. Existing Exceptions Remaining from 125th Legislature
Review drafts
 - Title 22, section 8754, reporting of sentinel events (divided)
 - Title 22, sections 1696-D and 1696-F, related to the Community Right-to-Know Act
3. Review of Existing Exceptions –Titles 26 through 39-A
 - A. Statutes tabled from August 8th meeting
14, 37, 45
 - B. Additional statutes ready for review
4. Public-private partnership, DOT projects, exception review (23 MRSA §4251)
Review draft (Minority report)
5. Scheduling future subcommittee meetings
6. Other?

Adjourn

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 26 – 39-A

Revised 9/4/2012 1:47 PM

Shaded = Tabled 8/8/12

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
1 26	3		Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor	<ul style="list-style-type: none"> • DECD • SPO/OPM • DOL 	<ul style="list-style-type: none"> • DECD • SPO/OPM? • DOL: no more than one or 2/year; NO CHANGE 		
2 26	43		Title 26, section 43, relating to the names of persons, firms and corporations providing information to the Department of Labor, Bureau of Labor Standards	<ul style="list-style-type: none"> • DOL 	<ul style="list-style-type: none"> • No requests • Federal law prohibits release that would identify • NO CHANGE 		
3 26	665	1	Title 26, section 665, subsection 1, relating to records submitted to the Director of Labor Standards within the Department of Labor by an employer concerning wages	<ul style="list-style-type: none"> • DOL 	<ul style="list-style-type: none"> • Request very rare • NO CHANGE 		
4 26	685	3	Title 26, section 685, subsection 3, relating to substance abuse testing by an employer	<ul style="list-style-type: none"> • ? 	DAFS, BHR <ul style="list-style-type: none"> • consistent with current personnel laws • info may be subject to federal law • NO POSITION 		
5 26	934		Title 26, section 934, relating to report of the State Board of Arbitration and Conciliation in labor dispute	<ul style="list-style-type: none"> • State Board of Arbitration and Conciliation 	<ul style="list-style-type: none"> • No requests • NO CHANGE 		
6 26	939		Title 26, section 939, relating to information disclosed by a party to the State Board of Arbitration and Conciliation	<ul style="list-style-type: none"> • State Board of Arbitration and Conciliation 	<ul style="list-style-type: none"> • 2 requests, final decision public • NO CHANGE 		

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7	26	1082	Title 26, section 1082, subsection 7, relating to employers' unemployment compensation records concerning individual information	<ul style="list-style-type: none"> • DOL 	<ul style="list-style-type: none"> • Requests not uncommon • Subject to court order • Federal law prohibits release • NO CHANGE 		
8	27	121	Title 27, section 121, relating to library records concerning identity of patrons and use of books and materials	<ul style="list-style-type: none"> • Maine State Library • Law and Legislative Reference Library • <i>UMS library</i> • <i>MCCS library</i> • <i>MMA library</i> • <i>Public libraries?</i> 	<ul style="list-style-type: none"> • 		
9	27	377	Title 27, section 377, relating to the location of a site in possession of a state agency for archeological research	<ul style="list-style-type: none"> • Maine Historic Preservation Commission • Maine State Museum 	<ul style="list-style-type: none"> • No FOA requests • Access/release of info permitted for legitimate research purposes • NO CHANGE 		
10	28-A	755	Title 28-A, section 755, relating to liquor licensees' business and financial records	<ul style="list-style-type: none"> • DAFS: BABLO 	<ul style="list-style-type: none"> • Not being collected now • Unresolved by Legislature in 125th • Support change but recommend NO CHANGE for now 		

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11	29-A	152	3	Title 29-A, section 152, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles	• SOS	<ul style="list-style-type: none"> Estimate: 12-20 times per year) NO CHANGE – comply with Federal Driver Privacy Protection Act 	8/8: Repeal	
12	29-A	253		Title 29-A, section 253, relating to motor vehicle records concerning certain nongovernmental vehicles	• SOS	<ul style="list-style-type: none"> Estimate: 12 times per year NO CHANGE 	8/8: No change (4-1; SBellows)	
13	29-A	255	1	Title 29-A, section 255, subsection 1, relating to motor vehicle records when a protection order is in effect	• SOS	<ul style="list-style-type: none"> Estimate: 6-10 times per year NO CHANGE 	8/8: No change	
14	29-A	257		Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system	• SOS	<ul style="list-style-type: none"> No request NO CHANGE 	8/8: Tabled—flag inconsistency with other provisions; ask OIT for input	
15	29-A	517	4	Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles	• SOS	<ul style="list-style-type: none"> Estimate: 1-2 every couple of years NO CHANGE 	8/8: Amend—strike 2 nd ¶ because same language in #12	
16	29-A	1258	7	Title 29-A, section 1258, subsection 7, relating to the competency of a person to operate a motor vehicle	• SOS	<ul style="list-style-type: none"> Estimate: daily NO CHANGE – comply with Federal Driver Privacy Protection Act 	8/8: No change	

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17	29-A	1401	6	Title 29-A, section 1401, subsection 6, relating to driver's license digital images	<ul style="list-style-type: none"> SOS 	<ul style="list-style-type: none"> Estimate: handful per year NO CHANGE – comply with Federal Driver Privacy Protection Act 	<ul style="list-style-type: none"> 8/8: No change (4-1; SBellows—remove law enforcement exception)
18	30-A	503	1	Title 30-A, section 503, subsection 1, relating to county personnel records	<ul style="list-style-type: none"> Counties – Joe Brown and Tim Leet? 	<ul style="list-style-type: none"> 	
19	30-A	503	1-A	Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force	<ul style="list-style-type: none"> Counties – Joe Brown and Tim Leet? 	<ul style="list-style-type: none"> 	
20	30-A	2702	1	Title 30-A, section 2702, subsection 1, relating to municipal personnel records	<ul style="list-style-type: none"> Municipalities 	<ul style="list-style-type: none"> 	
21	30-A	2702	1-A	Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force	<ul style="list-style-type: none"> Municipalities 	<ul style="list-style-type: none"> 	
22	30-A	4706	1	Title 30-A, section 4706, subsection 1, relating to municipal housing authorities	<ul style="list-style-type: none"> Municipalities 	<ul style="list-style-type: none"> 	
23	30-A	5242	13	Title 30-A, section 5242, subsection 13, relating to tax increment financing districts	<ul style="list-style-type: none"> Municipalities 	<ul style="list-style-type: none"> 	
24	32	85	3	Title 32, section 85, subsection 3, relating to criminal history record information for an applicant seeking initial licensure by the Emergency Medical Services Board	<ul style="list-style-type: none"> Emergency Medical Services Board 	<ul style="list-style-type: none"> Estimate: Fewer than 4 requests per year Records available to public through State Police Bureau of Identification NO CHANGE 	

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25	32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	• Emergency Medical Services Board	• Estimate: Fewer than 12 requests per year • NO CHANGE		
26	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board	• Emergency Medical Services Board	• Estimate: Fewer than 12 requests per year • NO CHANGE		
27	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to confidential information as part of application for credentialing by Emergency Medical Services Board	• Emergency Medical Services Board	• Estimate: Fewer than 6 requests per year • NO CHANGE		
28	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to the trauma incidence registry under section 87-B	• Emergency Medical Services Board	• Estimate: Fewer than 4 requests per year • NO CHANGE		
29	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board	• Emergency Medical Services Board	• No requests in many years • NO CHANGE		

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30	32	2105-A	3 Title 32, section 2105-A, subsection 3, relating to information provided by a health care facility to the State Board of Nursing that identify a patient	<ul style="list-style-type: none"> Nursing Board 	<ul style="list-style-type: none"> Patient information also protected by federal law (HIPAA) Redacted information can make contents of a complaint difficult to read for board members NO CHANGE 		
31	32	2109	Title 32, section 2109, relating to personal contact and health information of nurse applicants and licensees	<ul style="list-style-type: none"> Nursing Board 	<ul style="list-style-type: none"> Health information protected by federal law also NO BOARD DISCUSSION OR POSITION; may be superfluous to protect address and telephone number given Internet and search engines 		
32	32	2599	Title 32, section 2599, relating to medical staff reviews and hospital reviews – osteopathic physicians	<ul style="list-style-type: none"> Osteopathic Licensing Board 	<ul style="list-style-type: none"> 		
33	32	2600-A	Title 32, section 2600-A, relating to personal contact and health information of osteopathic physician applicants and licensees	<ul style="list-style-type: none"> Osteopathic Licensing Board 	<ul style="list-style-type: none"> 		
34	32	3296	Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees	<ul style="list-style-type: none"> Medical Licensing Board 	<ul style="list-style-type: none"> 		

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35	32	3300-A	Title 32, section 3300-A, relating to Board of Licensure in Medicine personal contact and health information about applicants and licensees	<ul style="list-style-type: none"> Medical Licensing Board 	<ul style="list-style-type: none"> 		
36	32	6115	Title 32, section 6115, subsection 1, relating to financial information provided to the Director of the Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation: money transmitters	<ul style="list-style-type: none"> DPR: Consumer Credit Regulation 	<ul style="list-style-type: none"> No requests; similar provision in other state licensing laws NO CHANGE 		
37	32	9418	Title 32, section 9418, relating to applications for private security guard license	<ul style="list-style-type: none"> DPS 	<ul style="list-style-type: none"> No experiences to discuss NO CHANGE 	8/8: Tabled—ask DPS for application	
38	32	11305	Title 32, section 11305, subsection 3, relating to administration of the Maine Commodity Code by the Securities Administrator	<ul style="list-style-type: none"> DPR: Securities Regulation 	<ul style="list-style-type: none"> No application of exemption NO CHANGE 		
39	32	13006	Title 32, section 13006, relating to real estate grievance and professional standards committees hearings	<ul style="list-style-type: none"> Real Estate Commission 	<ul style="list-style-type: none"> No experience; applies to records of hearings held by professional trade associations NO POSITION: Why part of Real Estate Brokerage Act? 		

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40	32	16607	2	Title 32, section 16607, subsection 2, relating to records obtained or filed under the Maine Securities Act	<ul style="list-style-type: none"> DPFR: Securities Regulation 	<ul style="list-style-type: none"> Seven requests: 5 requests partially denied to protect investigative records; 2 denied because only investigative records requested NO CHANGE 	
41	33	1971	4	Title 33, section 1971, subsection 4, relating to information derived from unclaimed property reports	<ul style="list-style-type: none"> Treasurer 	<ul style="list-style-type: none"> Requests infrequent NO CHANGE 	
42	34-A	1212		Title 34-A, section 1212, relating to personal information of Department of Corrections employees and contractors	<ul style="list-style-type: none"> Dept. of Corrections 	<ul style="list-style-type: none"> Approximately 10 times per year (during litigation) NO CHANGE 	
43	34-A	1216	1	Title 34-A, section 1216, subsection 1, relating to orders of commitment, medical and administrative records, applications and reports pertaining to any person receiving services from Department of Corrections	<ul style="list-style-type: none"> Dept. of Corrections 	<ul style="list-style-type: none"> Requests are frequent; can be released to some requesters NO CHANGE 	
44	34-A	1216	6	Title 34-A, section 1216, subsection 6, relating to documents used to screen or assess clients of the Department of Corrections	<ul style="list-style-type: none"> Dept. of Corrections 	<ul style="list-style-type: none"> Requested occasionally NO CHANGE 	
45	34-A	5210	4	Title 34-A, section 5210, subsection 4, relating to the State Parole Board report to the Governor	<ul style="list-style-type: none"> Dept. of Corrections 	<ul style="list-style-type: none"> Requested 2-3 times per year AMEND: clarify that applies regardless of entity advising Governor 	<ul style="list-style-type: none"> 8/8: Tabled—ask Governor's Office for input

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46	34-A	9877	4	Title 34-A, section 9877, subsection 4, relating to the release by the Interstate Commission for Adult Offender Supervision of records that adversely affect personal privacy rights or proprietary interests	• Dept. of Corrections	<ul style="list-style-type: none"> • No experience – records are of the governing body, not Maine • NO CHANGE 		
47	34-A	9903	8	Title 34-A, section 9903, subsection 8, relating to the release by the Interstate Commission for Juveniles of records that adversely affect personal privacy rights or proprietary interests	• Dept. of Corrections	<ul style="list-style-type: none"> • No experience – records are of the governing body, not Maine • NO CHANGE 		
48	34-B	1207	1	Title 34-B, section 1207, subsection 1, relating to mental health and mental retardation orders of commitment and medical and administrative records, applications and reports pertaining to any DHHS client	• DHHS	<ul style="list-style-type: none"> • DHHS does not collect data on requests • NO CHANGE 		
49	34-B	1223	10	Title 34-B, section 1223, subsection 10, relating to information about a person with mental retardation or autism accessed by the Maine Developmental Services Oversight and Advisory Board	• DHHS	<ul style="list-style-type: none"> • Relatively new board • One request • NO CHANGE 		
50	34-B	1931	6	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board	• DHHS	<ul style="list-style-type: none"> • Few cases • Legal opinion that does not comply with HIPAA • NO CHANGE • Overlapping responsibilities – may not be needed 		

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51	34-B	3864	Title 34-B, section 3864, subsection 5, relating to mental health involuntary commitment hearings	<ul style="list-style-type: none"> Judicial Branch? DPS: State Police 	<ul style="list-style-type: none"> Judicial Branch: No requests NO CHANGE DPS: State Police: 		
52	34-B	3864	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	<ul style="list-style-type: none"> Judicial Branch 	<ul style="list-style-type: none"> Judicial Branch: No requests NO CHANGE 		
53	34-B	5005	Title 34-B, section 5005, subsection 6, relating to records and accounts related to request for action by Office of Advocacy for person with mental retardation or autism	<ul style="list-style-type: none"> DHHS/Maine Disability Rights Commission Replaced 8/12 by §5005-A, sub-§5 (PL 2011, c. 657) 	<ul style="list-style-type: none"> DHHS: no data on requests NO CHANGE DHHS will be contracting with DRC 		
54	34-B	5475	Title 34-B, section 5475, subsection 3, relating to mental retardation judicial certification hearings	<ul style="list-style-type: none"> Judicial Branch 	<ul style="list-style-type: none"> No requests NO CHANGE 		
55	34-B	5476	Title 34-B, section 5476, subsection 6, relating to mental retardation judicial commitment hearings	<ul style="list-style-type: none"> Judicial Branch 	<ul style="list-style-type: none"> No requests NO CHANGE 		
56	34-B	5605	Title 34-B, section 5605, subsection 15, relating to records of persons receiving mental retardation or autism services	<ul style="list-style-type: none"> DHHS 	<ul style="list-style-type: none"> No data on requests NO CHANGE 		
57	34-B	7014	Title 34-B, section 7014, subsection 1, relating to court proceedings concerning sterilization	<ul style="list-style-type: none"> Judicial Branch 	<ul style="list-style-type: none"> No requests NO CHANGE 		
58	35-A	114	Title 35-A, section 114, subsection 1, relating to utility personnel records, not open to PUC	<ul style="list-style-type: none"> PUC 	<ul style="list-style-type: none"> No requests NO CHANGE 		

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59	35-A	704	5	Title 35-A, section 704, subsection 5, relating to utility records concerning customer information, Consumer Assistance Division	• PUC	<ul style="list-style-type: none"> • No requests • NO CHANGE 		
60	35-A	1311-A		Title 35-A, section 1311-A, relating to Public Utilities Commission protective orders	• PUC	<ul style="list-style-type: none"> • Rarely get requests • NO CHANGE 		
61	35-A	1311-B	1, 2, 4	Title 35-A, section 1311-B, subsections 1, 2 and 4, relating to public utility technical operations information	• PUC	<ul style="list-style-type: none"> • Occasional requests • NO CHANGE 		
62	35-A	1316-A		Title 35-A, section 1316-A, relating to Public Utilities Commission communications concerning utility violations	• PUC	<ul style="list-style-type: none"> • No requests • NO CHANGE 		
63	35-A	8703	5	Title 35-A, section 8703, subsection 5, relating to telecommunications relay service communications	• PUC	<ul style="list-style-type: none"> • Does not come through PUC • Could be worded more clearly 		
64	35-A	9207	1	Title 35-A, section 9207, subsection 1, relating to information about communications service providers	<ul style="list-style-type: none"> • PUC • ConnectME Authority 	<ul style="list-style-type: none"> • No requests • NO CHANGE 		
64.5	36	191		Title 36, section 191, relating to tax returns	<ul style="list-style-type: none"> • Maine Revenue Services 	<ul style="list-style-type: none"> • Protects individual and corporate tax return info • Corollary provision in federal Internal Revenue Code • NO CHANGE 		

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65 36	575-A	2	Title 36, section 575-A, subsection 2, relating to forest management and harvest plan provided to Bureau of Forestry and information collected for compliance assessment for Tree Growth Tax Law	<ul style="list-style-type: none"> Dept. of Conservation Maine Revenue Services 	DOC: <ul style="list-style-type: none"> New, closely parallels §579 Never received a request under §579 NO CHANGES MRS: <ul style="list-style-type: none"> No position 	(added by PL 2011, c. 619)	
66 36	579		Title 36, section 579, relating to the Maine Tree Growth Tax Law concerning forest management plans	<ul style="list-style-type: none"> <i>Municipal assessors</i> Maine Revenue Services 	MRS: <ul style="list-style-type: none"> No position 		
67 36	581-G	3	Title 36, section 581-G, subsection 3, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	<ul style="list-style-type: none"> Dept. of Conservation Maine Revenue Services 	DOC: <ul style="list-style-type: none"> Receives 1 – 2 requests per year, but by government agency or nonprofit educational org; denied one several years ago NO CHANGES MRS: <ul style="list-style-type: none"> NO POSITION 		
68 36	841	2	Title 36, section 841, subsection 2, relating to property tax abatement application information and proceedings	<ul style="list-style-type: none"> <i>Municipal officers</i> Maine Revenue Services 	MRS: <ul style="list-style-type: none"> NO CHANGE 		

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69	36	1106-A	Title 36, section 1106-A, subsection 3, paragraph D, relating to forest management and harvest plan made available for Farm and Open Space Tax Law	<ul style="list-style-type: none"> • <i>Municipal assessors</i> • Dept. of Conservation • Maine Revenue Services 	DOC: <ul style="list-style-type: none"> • New, closely parallels §579 • Never received a request under §579 • No provision to review plans under this section • NO POSITION MRS: <ul style="list-style-type: none"> • NO POSITION 	(added by PL 2011, c. 618, §7)	
70	36	4315	Title 36, section 4315, subsection 1-A, relating to the transportation of wild blueberries	<ul style="list-style-type: none"> • Wild Blueberry Commission • Maine Revenue Services 	WBC: <ul style="list-style-type: none"> • No requests • NO CHANGE MRS: <ul style="list-style-type: none"> • NO CHANGE 		
71	36	4316	Title 36, section 4316, subsection 4, relating to wild blueberries audits by Department of Agriculture	<ul style="list-style-type: none"> • Wild Blueberry Commission • Dept. of Agriculture • Maine Revenue Services 	WBC: <ul style="list-style-type: none"> • Administration does not apply to WBC MRS: <ul style="list-style-type: none"> • NO CHANGE 		
72	36	6760	Title 36, section 6760, relating to employment tax increment financing	<ul style="list-style-type: none"> • DAFS – • Commissioner • State Tax Assessor 	<ul style="list-style-type: none"> • NO CHANGE 		
73	37-B	506	Title 37-B, section 506, relating to Department of Defense, Veterans and Emergency Management, Bureau of Maine Veterans' Services benefits	<ul style="list-style-type: none"> • DVEM: Bureau of Veterans' Affairs 	<ul style="list-style-type: none"> • NO CHANGE 		

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74	37-B	708	Title 37-B, section 708, subsection 3, relating to documents collected or produced by the Homeland Security Advisory Council	<ul style="list-style-type: none"> DVEM: MEMA 	<ul style="list-style-type: none"> No requests NO CHANGE 		
75	37-B	797	Title 37-B, section 797, subsection 7, relating to Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency reports of hazardous substance transportation routes	<ul style="list-style-type: none"> DVEM: MEMA 	<ul style="list-style-type: none"> 1 – 2 request per year for general info NO CHANGE 		
76	38	100-A	Title 38, section 100-A, subsection 1, relating to complaints and investigative records concerning vessel pilots	<ul style="list-style-type: none"> DOT: Marine Pilotage Commission 	<ul style="list-style-type: none"> 		
77	38	345-A	Title 38, section 345-A, subsection 4, relating to information submitted to the Department of Environmental Protection and Board of Environmental Protection concerning trade secrets	<ul style="list-style-type: none"> DEP BEP 	<ul style="list-style-type: none"> DEP: subpoenas issued for trade secret info NO POSITION; Clarify by including cross-reference to definition of trade secret ? 		

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78	38	414	Title 38, section 414, subsection 6, relating to records and reports obtained by the Board of Environmental Protection in water pollution control license application procedures	<ul style="list-style-type: none"> • DEP • BEP 	<ul style="list-style-type: none"> • DEP: 1-2 requests per year • NO CHANGE • BEP: No need to access info in proceedings • NO POSITION; Clarify by including cross-reference to definition of trade secret? 		
79	38	470-D	Title 38, section 470-D, relating to individual water withdrawal reports	<ul style="list-style-type: none"> • DEP 	<ul style="list-style-type: none"> • No requests • Information reported in aggregate • NO CHANGE 		
80	38	585-B	Title 38, section 585-B, subsection 6, relating to mercury reduction plans for air emission source emitting mercury	<ul style="list-style-type: none"> • DEP 	<ul style="list-style-type: none"> • No requests by facilities to keep information confidential • REPEAL 		
81	38	585-C	Title 38, section 585-C, subsection 2, relating to the hazardous air pollutant emissions inventory	<ul style="list-style-type: none"> • DEP 	<ul style="list-style-type: none"> • No requests by facilities to keep information confidential for at least 10 years • REPEAL 		

Public Records Exceptions Subcommittee
Existing Public Records Exceptions, Titles 26 – 39-A
Revised 9/4/2012 1:47 PM

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
82	38	1310-B	2 Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	• DEP	<ul style="list-style-type: none"> Few requests for each type of info; Concerns that electronic filing often means DEP has multiple copies of confidential information; lack of locked storage space for confidential records NO CHANGE 		
83	38	1610	6-A Title 38, section 1610, subsection 6-A, paragraph F, relating to annual sales data on the number and type of computer monitors and televisions sold by the manufacturer in this State over the previous 5 years	• DEP	<ul style="list-style-type: none"> No requests Manufacturers do mark portions of annual filing as confidential and info is segregated from public files NO CHANGE 		
84	38	1661-A	4 Title 38, section 1661-A, subsection 4, relating to information submitted to the Department of Environmental Protection concerning mercury-added products	• DEP	<ul style="list-style-type: none"> 2 requests made for confidential info DEP followed process in § 1310-B, sub-§ 2 and requested info was able to be provided or summarized info provided NO CHANGE 		

Public Records Exceptions Subcommittee

Existing Public Records Exceptions, Titles 26 – 39-A

Revised 9/4/2012 1:47 PM

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
85	38	2307-A	1, 5	Title 38, section 2307-A, subsections 1 and 5, relating to information submitted to the Department of Environmental Protection concerning toxics use and hazardous waste reduction (REPEALED 7/1/12)	• DEP	<ul style="list-style-type: none"> • Only 1 request • Replaced by new statute; rules pending to implement confidentiality provision (38 MRSA § 2324, sub-§3) • CONTINUE; NO CHANGE 		
86	39-A	153	5	Title 39-A, section 153, subsection 5, relating to the Workers' Compensation Board abuse investigation unit	• Workers' Compensation Board	<ul style="list-style-type: none"> • Average of 6 times per year • NO CHANGE 		
87	39-A	153	9	Title 39-A, section 153, subsection 9, relating to the Workers' Compensation Board audit working papers	• Workers' Compensation Board	<ul style="list-style-type: none"> • No requests • NO CHANGE 		
88	39-A	355-B	11	Title 39-A, section 355-B, subsection 11, relating to records and proceedings of the Workers' Compensation Supplemental Benefits Oversight Committee concerning individual claims	• Workers' Compensation Board	<ul style="list-style-type: none"> • No requests • NO CHANGE 		
89	39-A	403	3	Title 39-A, section 403, subsection 3, relating to workers' compensation self-insurers proof of solvency and financial ability to pay	• BOI	<ul style="list-style-type: none"> • No requests • NO CHANGE 		
90	39-A	403	15	Title 39-A, section 403, subsection 15, relating to records of workers' compensation self-insurers	• BOI	<ul style="list-style-type: none"> • Requests are rare • NO CHANGE 		

Public Records Exceptions Subcommittee
Existing Public Records Exceptions, Titles 26 – 39-A
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TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
91 39-A	409		Title 39-A, section 409, relating to workers' compensation information filed by insurers concerning the assessment for expenses of administering self-insurers' workers' compensation program	<ul style="list-style-type: none"> BOI 	<ul style="list-style-type: none"> No requests AMEND; clarify that already included within § 403, sub-§ 15 exception 		

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Public Records Exceptions Subcommittee
Proposed Draft of Title 22, section 8754 related to sentinel events
Based on Subcommittee Vote at July 16th Meeting

Sec. 1. 22 MRSA §8754 is amended to read:

§8754. Division duties

The division has the following duties under this chapter.

1. Initial review; other action. Upon receipt of a notification or report of a sentinel event, the division shall complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. Upon receipt of a notification or report of a suspected sentinel event the division shall determine whether the event constitutes a sentinel event and complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. The division may conduct on-site reviews of medical records and may retain the services of consultants when necessary to the division.

A. The division may conduct on-site visits to health care facilities to determine compliance with this chapter.

B. Division personnel responsible for sentinel event oversight shall report to the division's licensing section only incidences of immediate jeopardy and each condition of participation in the federal Medicare program related to the immediate jeopardy for which the provider is out of compliance.

2. Procedures. The division shall adopt procedures for the reporting, reviewing and handling of information regarding sentinel events. The procedures must provide for electronic submission of notifications and reports.

~~**3. Confidentiality.** Notifications and reports filed pursuant to this chapter and all information collected or developed as a result of the filing and proceedings pertaining to the filing, regardless of format, are confidential and privileged information.~~

~~A. Privileged and confidential information under this subsection is not:~~

~~(1) Subject to public access under Title 1, chapter 13, except for data developed from the reports that do not identify or permit identification of the health care facility;~~

~~(2) Subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity; or~~

Public Records Exceptions Subcommittee
Proposed Draft of Title 22, section 8754 related to sentinel events
Based on Subcommittee Vote at July 16th Meeting

~~(3) Admissible as evidence in any civil, criminal, judicial or administrative proceeding.~~

~~B. The transfer of any information to which this chapter applies by a health care facility to the division or to a national organization that accredits health care facilities may not be treated as a waiver of any privilege or protection established under this chapter or other laws of this State.~~

~~C. The division shall take appropriate measures to protect the security of any information to which this chapter applies.~~

~~D. This section may not be construed to limit other privileges that are available under federal law or other laws of this State that provide for greater peer review or confidentiality protections than the peer review and confidentiality protections provided for in this subsection.~~

~~E. For the purposes of this subsection, "privileged and confidential information" does not include:~~

~~(1) Any final administrative action;~~

~~(2) Information independently received pursuant to a 3rd party complaint investigation conducted pursuant to department rules; or~~

~~(3) Information designated as confidential under rules and laws of this State.~~

~~This subsection does not affect the obligations of the department relating to federal law.~~

3-A. Notifications and reports subject to Title 1, chapter 13. Notifications and reports filed pursuant to this chapter and all information collected or developed as a result of the filing and proceedings pertaining to the filing, regardless of format, are subject to public access under Title 1, chapter 13, except for:

A. Information designated as confidential under federal law; and

B. Data developed from the reports that identifies or permits identification of a patient of a health care facility.

{Are there other types or categories of information reported to the department that should be designated as confidential??}

Public Records Exceptions Subcommittee

Proposed Draft of Title 22, section 8754 related to sentinel events

Based on Subcommittee Vote at July 16th Meeting

4. Report. The division shall submit an annual report by February 1st each year to the Legislature, health care facilities and the public that includes summary data of the number and types of sentinel events of the prior calendar year by type of health care facility, rates of change and other analyses and an outline of areas to be addressed for the upcoming year.

Summary

This draft amendment repeals the provision making confidential notifications, reports and other information filed with the department related to sentinel events. The amendment makes the information subject to public access pursuant to Title 1, chapter 13, except for information designated as confidential under federal law and information that identifies or permits identification of a patient of a health care facility.

Public Records Exceptions Subcommittee

Proposed Draft of Title 22, section 8754 related to sentinel events

Based on Subcommittee Vote at July 16th Meeting

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To: Right To Know Advisory Committee - Exemption Review Sub-Committee

**From: Maine Hospital Association, Maine Medical Association, Maine Osteopathic Association,
Medical Mutual Insurance Company of Maine**

Date: September 14, 2012

Re: Sentinel Event Confidentiality (Title 22 MRSA §8754)

Thank you for accepting these comments from MHA, MMA, MOA and Medical Mutual on your review of the confidentiality of sentinel event records in the possession of the Department of Health and Human Services (DHHS).

When the Exemption Review Sub-Committee sought input on this exemption (in 2010), MHA and others opposed changes to the exemption. We are unaware of any comment, provided either in writing or at a meeting of the Sub-Committee, which supported making any changes to the statute.

We believe the fact that your process produced no call for changes is evidence that the program is working as intended. Following are several other reasons not to change the confidentiality for sentinel event records.

1. Removing confidentiality is bad policy. The legislatively declared purpose of the Sentinel Event program (22 MRSA §8751-8756) is to improve performance: *"There is established under this chapter a system for reporting sentinel events for the purpose of improving the quality of health care and increasing patient safety."* Transparency and keeping the public informed are valid public purposes. However, they are not the purpose of the sentinel event statute and program.

The purpose of a sentinel event program is to improve quality. It works by making sure health care providers fully understand "what happened" and, with the help of DHHS, make changes to policies and practices where necessary to prevent similar events from happening again. Both the process of doing a root cause analyses and the results of that analyses drive health care quality improvement. In order for sentinel event systems to succeed, confidentiality is essential. The internal sentinel event systems must have full staff acceptance that the process is not about ascribing blame or shame associated with the event. Public reporting of these internal reviews will have a significant chilling effect on discovering all of the events as well as the facts that are necessary to understand the events.

2. Confidentiality was critical to the enactment of the sentinel event law . When the statute was enacted 10 years ago, it went through a lengthy legislative process. It was heard in April 2001, strongly opposed as drafted by many organizations,(including the above signers), and held-over until the next session where it was substantially amended and finally enacted in April 2002. ***The original bill did not have a confidentiality provision and that was a prime focus of our opposition.*** The bill was all but dead as originally proposed. It was only after confidentiality

was added that it got broader support and enactment. Removal of confidentiality is patently unfair because it undoes an important legislative compromise without which the program probably never would have existed.

3. **There is publicly available information about hospital quality.** Members of the RTKAC may not be aware of the burgeoning availability of hospital quality data. The leading collector and disseminator of the quality of care provided in hospitals in the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services (CMS). CMS maintains a publicly available website called “Hospital Compare” where data about dozens of quality metrics are available, by hospital name. While no system is perfect, this data set provides a much more comprehensive picture about the care provided at hospital facilities. In addition, private organizations both use the CMS data to create score cards and they supplement the CMS data with additional information they gather. Groups ranging from the Maine Health Management Coalition to Consumer Reports collect and disseminate data about health care quality. The amount and accessibility of the data is growing each year.

Attached is a matrix developed by MHA that shows most of the publicly available hospital-specific data that may be used to evaluate the quality and safety of care. The first column lists each quality metric, with the National Quality Forum reference number in most cases which provides the national definition of each metric. The top horizontal row defines whether the metric is collected at the state or federal level. CMS collects or calculates hospital-specific measures in 9 different programs. “MQF/MHDO” is the Maine Quality Forum/Maine Health Data Organization, which mandates the collection of certain hospital quality and safety data under Chapter 270. “MHMC” is the Maine Health Management Coalition which posts additional hospital-specific data on their publicly available web site. This is the data used in the state employees’ hospital tiering program.

Not only is the raw data available publicly, but increasingly, groups are taking the data and putting them into more user-friendly scorecards and ranking systems such as you see at Consumer Reports.

4. **Hospitals are not public/government entities.** The foundation of the argument about the “public’s right to know” seems misplaced in reference to hospitals. The purpose of the FOA Act is to provide transparency into what **government** is doing. There is obviously public curiosity and interest in many private organizations but the FOA Act does not apply to private organizations. As best we understand the arguments in favor of repealing the confidentiality those arguments are rooted in the desire for the public to know what is going on in hospitals, not in the desire to know what is going on at DHHS. The annual DHHS sentinel event report no doubt satisfies the public interest in understanding what DHHS is doing. Expanding the FOA Act, in effect, provide the public access to the internal documents of private organizations is simply inappropriate.

5. **Sentinel Events may be a misleading metric.** More reports at a particular facility do not necessarily mean more problems or poorer quality; this may be misleading indicia. A higher level of reporting may simply be a reflection of a more robust reporting culture at a particular hospital – which would be good for patient safety.

6. **Other States include confidentiality protections.** The federal DHHS Office of the Inspector General issued a report in 2008 on state reporting systems for hospital adverse events which found that **25 of 26 states with sentinel event programs provide confidentiality.**¹ *(This is not inconsistent with the staff memo that found fewer state confidentiality provisions. Staff indicated that they found a confidentiality provisions included in the sentinel event statute in 15 states. They noted that confidentiality could have still been provided somewhere else in each states' statutes.)*

7. **Several accountability measures are available.** There are plenty of accountability measures available to patients and their families who experience sentinel events, with a varying degree of transparency. These measures include: filing complaints directly with providers; filing complaints with professional licensing boards; filing complaints with DHHS facilities licensing; private tort litigation; and, patients going to the press/social media.

8. **The process to release sentinel event information will be difficult and expensive.** The state may not override the patient confidentiality provisions in federal laws such as HIPAA. Accordingly, before DHHS would be able to release sentinel event records, someone would have to redact the sentinel event records to prevent any personally identifying information or other such privacy related information from being disclosed.

Conclusion

The challenge you face in reviewing every single exemption ever enacted is daunting. The fact that you have a process to conduct the review is great and essential to doing a good job. The process revealed no objections to confidentiality and there are several persuasive reasons to keep the provision intact. The subcommittee needs to trust the process and not dramatically disrupt an important program grounded in improving health care quality.

MHA staff regrets not being able to attend this meeting in person. We take this issue quite seriously and are more than happy to meet with you to discuss this further.

¹ U.S. Department of Health and Human Services, Office of the Inspector General, *Adverse Events in Hospitals: State Reporting Systems* (2008), p. 13.

Program

Quality Measure	CMS: IPPS for FY 2013	CMS: IPPS for FY 2014	CMS: IPPS for FY 2015	CMS: Outpatient CY 2011-2013	CMS: VBP FY 2013	CMS: VBP FY 2014	CMS: VBP FY 2015	CMS: HAC	CMS: HITECH meaningful use clinical quality measures ²	CMS: ACO	CMS: Readmission Program	CMS: Inpatient Psychiatric FY 2014	CMS: Medicaid	Maine: MQF/ MUO Ch. 270 ³	Maine: MHMC
Utilization of inpatient care (total inpatient, medicine, surgery and maternity) (Rand)															
Leapfrog Survey															
Medication Spotlight Survey															
Acute Myocardial Infarction (AMI)															
Appropriateness of Care Measure (ACM) Composite															
AMI-1: Aspirin at arrival	X	Suspend 12/31/11												X	X
AMI-2: Aspirin prescribed at discharge (NQF #142)	X	X	X						X					X	
AMI-3: Angiotensin Converting Enzyme Inhibitor (ACE-I) or Angiotensin II Receptor Blocker (ARB) for left ventricular systolic dysfunction	X	Suspend 12/31/11												X	
AMI-4: Adult smoking cessation advice/counseling	X	Retire 12/31/11												X	
AMI-5: Beta blocker prescribed at discharge	X	Suspend 12/31/11												X	
AMI-7a: Fibrinolytic (thrombolytic) agent received within 30 minutes of arrival (NQF #164)	X	X	X		X	X			X					X	
AMI-8a: Timing of receipt of primary PCI (NQF #163)	X	X	X		X	X			X					X	
AMI-10: Statin prescribed at discharge (NQF #639)	X	X	X						X						
Heart Failure (HF)															
Appropriateness of Care Measure (ACM) Composite															
HF-1: Discharge instructions	X	X	X		X	X								X	
HF-2: Evaluation of left ventricular systolic function	X	X	X											X	
HF-3: Angiotensin Converting Enzyme Inhibitor (ACE-I) or Angiotensin II Receptor Blocker (ARB) for left ventricular systolic dysfunction	X	X	X		X	X								X	
HF-4: Adult smoking cessation advice/counseling	X	Retire 12/31/11												X	
Stroke Measure Set															
STK-1: VTE prophylaxis (NQF #434)			X	X											
STK-2: Antithrombotic therapy for ischemic stroke at discharge (NQF #435)			X	X					X						
STK-3: Anticoagulation therapy for afib/flutter (NQF #436)			X	X					X						
STK-4: Thrombolytic therapy for acute ischemic stroke (NQF #437)			X	X					X						
STK-5: Antithrombotic therapy by the end of hospital day 2 (NQF #438)			X	X					X						
STK-6: Discharged on statin (NQF #439)			X	X					X						
STK-8: Stroke education (NQF #440)			X	X					X						
STK-10: Assessed for rehabilitation services (NQF #441)			X	X					X						
VTE Measure Set															
VTE-1: VTE prophylaxis (NQF #371)			X	X					X						
VTE-2: ICU VTE prophylaxis (NQF #372)			X	X					X						
VTE-3: VTE patients with anticoagulation overlap therapy (NQF #373)			X	X					X						
VTE-4: Patients receiving un-fractionated Heparin with doses/labs monitored by protocol (NQF #374)			X	X					X						
VTE-5: VTE discharge instructions (NQF #375)			X	X					X						
VTE-6: Incidence of potentially preventable VTE (NQF #376)			X	X					X						
Pneumonia (PN)															

Program

Quality Measure

Quality Measure	CMS: IPPS for FY 2013	CMS: IPPS for FY 2014	CMS: IPPS for FY 2015	CMS: IPPS for FY 2016	CMS: Outpatient CY 2011-2015	CMS: VBP FY 2013	CMS: VBP FY 2014	CMS: VBP FY 2015	CMS: HAC	CMS: HIT/ECCH meaningful and clinical quality measures*	CMS: ACO	CMS: Readmission Reduction Program	CMS: Inpatient Psychiatric FY 2014	CMS: Medicaid	Maine: MOF/ MHO Ch. 270	Maine: MHNC
Appropriateness of Care Measure (ACM) Composite																X
PN-2: Pneumococcal vaccination status	X	Retire 12/31/11													X	
PN-3b: Blood culture performed before first antibiotic received in hospital	X	X	X	X		X	X	X								
PN-4: Adult smoking cessation advice/counseling	X	Retire 12/31/11													X	
PN-5c: Timing of receipt of initial antibiotic following hospital arrival	X	Retire 12/31/11													X	
PN-6: Appropriate initial antibiotic selection (NQF #147)	X	X	X	X		X	X	X		X					X	
PN-7: Influenza vaccination status	X	Retire 12/31/11													X	
Surgical Care, including the Surgical Care Improvement Project (SCIP)																
Appropriateness of Care Measure (ACM) Composite																
SCIP INF-1: Prophylactic antibiotic received within 1 hour prior to surgical incision (NQF #527)	X	X	X	X		X	X	X		X					X	
SCIP INF-2: Prophylactic antibiotic selection for surgical patients (NQF #528)	X	X	X	X		X	X	X		X					X	
SCIP INF-3: Prophylactic antibiotics discontinued within 24 hours after surgery end time (48 hours for cardiac surgery)	X	X	X	X		X	X	X							X	
SCIP INF-4: Cardiac surgery patients with controlled 6AM postoperative serum glucose	X	X	X	X		X	X	X							X	
SCIP INF-6: Surgery patients with appropriate hair removal	X	Suspend 12/31/11													X	
SCIP INF-9: Postoperative urinary catheter removal on post operative day 1 or 2 with day of surgery being day zero (NQF #453)	X	X	X	X		X	X	X		X						
SCIP INF-10: Surgery patients with perioperative temperature management	X	X	X	X		X	X	X							X	
SCIP Cardiovascular-2: Surgery patients on a beta blocker prior to arrival who received a beta blocker during the perioperative period	X	X	X	X		X	X	X								
SCIP VTE-1: Surgery patients with venous thromboembolism (VTE) prophylaxis ordered	X	X				X	X	X							X	
SCIP VTE-2: Surgery patients who received appropriate VTE prophylaxis within 24 hours pre/post surgery	X	X	X	X		X	X	X							X	
Safe Surgery Checklist use for inpatient surgery				X												
Risk-standardized complication rate after elective primary total hip or total knee arthroplasty (NQF # 1550)			X	X												
Mortality Measures (Medicare Patients)																
AMI 30-day mortality rate	X	X	X	X		X	X	X								
Heart failure 30-day mortality rate	X	X	X	X		X	X	X								
Pneumonia 30-day mortality rate	X	X	X	X		X	X	X								
Patients' Experience of Care																
HCAHPS (Beginning FY 2015, CMS adds: were you admitted to the hospital through the ED & how would you rate your overall mental/emotional health)	X	X	X	X		X ²	X ²	X ²								X ²
CTM-3: Care transition measure (NQF #228)			X	X		X									X	X
Transition record with specified elements received by discharged inpatients (NQF #647; AMA-PCPI)																
Readmission Measure (Medicare Patients)																
AMI 30-Day Risk Standardized Readmission	X	X	X	X		X						X				
Heart failure 30-Day Risk Standardized Readmission	X	X	X	X								X				

Program

Quality Measure	CMS: IPPS for FY 2013	CMS: IPPS for FY 2014	CMS: IPPS for FY 2015	CMS: IPPS for FY 2016	CMS: Outpatient CY 2011-2015	CMS: VBP FY 2013	CMS: VBP FY 2014	CMS: VBP FY 2015	CMS: HAC	CMS: HITECH meaningful use clinical quality measure*	CMS: ACO	CMS: Readmission Reduction Program	CMS: Inpatient Psychiatric FY 2014	CMS: Medicaid	Maine: MQF/ MHO Ch. 2703	Maine: MHMC
Pneumonia 30-Day Risk Standardized Readmission	X	X	X	X								X				
Risk-standardized all-cause 30 day readmission (NQF #0329)			X	X							X			X		X
30 day readmission for total hip and knee arthroplasty (NQF #1551)			X	X												
AHRO Indicators and Composite Measures																
PQ1: ASCS admissions (diabetes, short term) (NQF #272)														X		
PQ2: ASCS admissions (perforated appendix) (NQF #273)																
PQ3: ASCS admissions (diabetes long term complications) (NQF #274)																
PQ5: ASCS admissions (COPD) (NQF #275)														X		
PQ7: ASCS admissions (hypertension) (NQF #276)																
PQ8: ASCS admissions (heart failure) (NQF #277)														X		
PQ10: ASCS admissions (dehydration) (NQF #280)																
PQ11: ASCS admissions (bacterial pneumonia) (NQF #279)																
PQ12: ASCS admissions (urinary infections) (NQF #281)																
PQ13: ASCS admissions (angina without procedure) (NQF #282)																
PQ14: ASCS admissions (diabetes, uncontrolled) (NQF #638)																
PQ15: ASCS admissions (adult asthma) (NQF #283)														X		
PQ16: ASCS admissions (lower extremity amputation diabetes) (NQF #285)																
PSI 4: Death among surgical inpatients with serious, treatable complications	X	X	X	X												
PSI 6: Iatrogenic pneumothorax, adult	X	X														
PSI 11: Post operative respiratory failure	X	X														
PSI 12: Post operative PE or DVT	X	X														
PSI 14: Post operative wound dehiscence	X	X														
PSI 15: Accidental puncture or laceration	X	X														
PSI 90: Complication/patient safety for selected indicators (composite)	X	X	X	X				X								
IQI 11: Abdominal aortic aneurysm mortality rate	X	X														
IQI 19: Hip fracture mortality rate	X	X														
IQI 91: Mortality for selected medical conditions (composite)	X	X														
Structural Measures																
Participation in a systematic database for cardiac surgery	X	X	X	X												
Participation in a systematic clinical database registry for stroke care	X	X	X	X												
Participation in a systematic clinical database registry for nursing sensitive care	X	X	X	X												
Participation in a systematic clinical database registry for general surgery	X	X	X	X												
Health care-Associated Infections Measures																
Central line associated bloodstream infection (critical care units)	X	X	X	X				X							X	
SSI (NHSN) (NQF #299) (Cardiac, hip/ knee arthroplasty, colon, hysterectomy & vascular) (IPPS FY 2014: colon & abdominal hvst only)	X	X	X	X											X	
Central line insertion practices percentage (NQF #298)															X	
Percent compliance with the mechanical ventilation bundle of care																
Catheter-associated urinary tract infection (CAUTI) (critical care units)	X	X	X	X												
MRSA bacteremia (NHSN)			X	X												
Nosocomial MRSA infection rate (CMS is NHSN MRSA bacteremia measure)															X	

Program

Quality Measure	CMS: IPPS for FY 2013	CMS: IPPS for FY 2014	CMS: IPPS for FY 2015	CMS: IPPS for FY 2016	CMS: Outpatient CY 2015	CMS: VBP FY 2013	CMS: VBP FY 2014	CMS: VBP FY 2015	CMS: HAC	CMS: HIT/CH meaningful use clinical quality measures*	CMS: Readmission Reduction Program	CMS: Inpatient Psychiatric FY 2014	CMS: Medicaid	Maine: MQF/ MHO Ch. 270	Maine: MHNC
Clostridium difficile (C. Diff) SIR (NHSN)			X	X										X	
Health care personnel influenza vaccination (NHSN)			X	X											
Nursing Sensitive Care Measures															
Percentage of inpatients with hospital-acquired pressure ulcer2 Stage 1														X	
Number of inpatient falls per inpatient days														X	
Number of inpatient falls with injury per inpatient days														X	
Percentage of inpatients who have a vest or limb restraint														X	
Percentage of RN care hours to total nursing care hours														X	
Percentage of LVN/LPN care hours to total nursing care hours														X	
Percentage of UAP care hours to total nursing care hours														X	
Percentage of contract hours (RN, LPN/LVN, UAP) per patient day														X	
Number of RN care hours per patient day														X	
Number of total nursing care hours (RN, LPN/LVN, UAP) per patient day														X	
Number of voluntary uncontrolled separations for RNs and APNs														X	
Number of voluntary uncontrolled separations for LPN/LVN and nurse aides														X	
AHRQ Hospital Survey on Patient Safety Culture for nursing staff annually														X	
Hospital Acquired Condition Measures															
Foreign object retained after surgery	X	X							X						
Air embolism	X	X							X						
Blood incompatibility	X	X							X						
Pressure ulcer Stages III & IV	X	X							X						
Falls and trauma (includes: fracture, dislocation, intracranial injury, crushing injury, burn, electric shock)	X	X							X						
Vascular catheter-associated infection	X	X							X						
Catheter-associated urinary tract infection (CAUTI)	X	X							X						
Manifestations of poor glycemic control	X	X							X						
Surgical site infection after certain cardiac, orthopedic and bariatric surgeries									X						
DVT/PE after hip or total knee replacement									X						
Surgical site infection after cardiac implantable electronic device (FY 2013)									X						
Iatrogenic pneumothorax with venous catheterization (FY 2013)									X						
Emergency Department Throughput															
ED-1: Median time from emergency department arrival to departure from the emergency room for patients admitted to the hospital (NOF #495)		X	X	X						X					
ED-2: Median time from admit decision to time of departure from the ED for ED patients admitted to the inpatient status (NOF #497)		X	X	X						X					
ED-3: Median time from ED arrival to ED departure for discharged ED patients (NOF #496)										X					
Global Immunization Measures															
Global flu immunization		X	X	X											
Global pneumonia immunization		X	X	X											
Cost Efficiency															
Medicare spending per beneficiary		X	X	X											
HealthPartners Total Cost of Care and Total Resource Use Measure Set															X

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Program

Quality Measure	CMS: IPPS for FY 2013	CMS: IPPS for FY 2014	CMS: IPPS for FY 2015	CMS: Outpatient CY 2015	CMS: VBP FY 2013	CMS: VBP FY 2014	CMS: VBP FY 2015	CMS: HAC	CMS: RITECH measuring use clinical quality measures ⁴	CMS: Readmission Reduction Program	CMS: Inpatient Psychiatric FY 2014	CMS: Medicaid	Maine: MQIP/ MEDO Ch. 270 ³	Maine: MHMC
Perinatal Care														
PC-01: Elective delivery before 39 weeks gestation (NQF #469)			X						X			X		X
Appropriate use of antenatal steroids (NQF #476)												X		
Prenatal and postpartum care rate (NQF # 1391; NCQA)												X		
Cesarean section delivery (Joint Commission)									X					
Exclusive breast milk feeding (Joint Commission; NQF #480)									X					
Healthy term newborn (NQF #716)									X					
EHDI-1a: hearing screening prior to hospital discharge (NQF #1354)														
Hospital-based Inpatient Psychiatric Services (Joint Commission/CMS)														
HBIPS-1: Admission screening completed for violence risk, substance use, psychological trauma history and patient strengths											X			
HBIPS-2: Hours of physical restraint use (NQF #640)											X			
HBIPS-3: Hours of seclusion use (NQF #641)											X			
HBIPS-4: Patients discharged on multiple antipsychotic medications (NQF #552)											X			
HBIPS-5: Patients discharged on multiple antipsychotic medications with appropriate justification (NQF #560)											X			
HBIPS-6: Post-discharge continuing care plan created (NQF #557)											X			
HBIPS 7: Post-discharge continuing care plan transmitted to the next level of care provider upon discharge (NQF #558)											X			
Children's Asthma Care (Joint Commission/CMS)														
CAC-1: Use of Relievers for Inpatient Asthma														
CAC-2: Use of Systemic Corticosteroids for Inpatient Asthma														
CAC-3: Home Management Plan of Care Given to Patient/Caregiver (NQF #559)									X					
Tobacco Use (Joint Commission)														
TOB-1: Tobacco use screening														
TOB-2: Tobacco use treatment offered during hospital stay														
TOB-2a: Tobacco use treatment														
TOB-3: Tobacco use treatment offered at discharge														
TOB-3a: Tobacco use treatment at discharge														
TOB-4: Tobacco use: assessing status after discharge														
Substance Abuse (Joint Commission)														
SUB-1: Alcohol use screening														
SUB-2: Alcohol use brief intervention offered/provided														
SUB-2a: Alcohol use brief intervention														
SUB-3: Alcohol and other drug abuse disorder treatment provided or offered at discharge														
SUB-3a: Alcohol and other drug use disorder treatment at discharge														
SUB-4: Alcohol and drug use: assessing status after discharge														
2011 Hospital National Patient Safety Goals (Joint Commission)														
NPSG.01.01.01: Use at least two ways to identify patients														
NPSG.01.03.01: Make sure that the correct patient gets the correct blood when they get a blood transfusion														
NPSG.02.03.01: Get important test results to the right staff person on time														
NPSG.03.04.01: Before a procedure, label all medicines/solutions/containers														

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Program

Quality Measure	CMS: IPPS for FY 2013	CMS: IPPS for FY 2014	CMS: IPPS for FY 2015	CMS: IPPS for FY 2016	CMS: Outpatient CY 2011-2015	CMS: VBP FY 2013	CMS: VBP FY 2014	CMS: VBP FY 2015	CMS: HAC	CMS: HITECH meaningful use clinical quality measures ⁶	CMS: Readmission Reduction Program	CMS: Inpatient Psychiatric FY 2014	CMS: Medicaid	Maine: MQE/ MHO Ch. 270 ⁹	Maine: MHMC
NPSG.03.05.01: Take extra care with patients on anticoagulant therapy															
NPSG.07.01.01: Use the hand hygiene guidelines from the CDC or the WHO, and set/use goals for improving hand cleaning															
NPSG.07.03.01: Use evidence-based guidelines to prevent hospital-acquired MDRO infections															
NPSG.07.04.01: Use evidence-based guidelines to prevent CLABSI															
NPSG.07.05.01: Use evidence-based guidelines for preventing surgical site infections															
NPSG.08.01.01: Accurately and completely reconcile medications across the continuum of care (standard is not in effect at this time)															
NPSG.08.02.01: Give a list of the patient's medicines to their next caregiver/regular doctor before discharge (standard is not in effect at this time)															
NPSG.08.03.01: Provide a list and explanation of the patient's medicines to the patient/family before discharge (standard is not in effect now)															
NPSG.08.04.01: For patients who get medicine in small amounts or for a short time, perform modified medication reconciliation (standard is not in effect now)															
NPSG.15.01.01: Identify patients at risk for suicide															
UP.01.01.01: Conduct a pre-procedure verification process															
UP.01.02.01: Mark the correct surgical site on the patient's body															
UP.01.03.01: Perform a time-out before the procedure															
(2012) NPSG.07.07.01: Implement evidence-based practices to prevent indwelling catheter-associated urinary tract infections (CAUTI)															
Hospital Outpatient Measures (Joint Commission/CMS)															
OP-1: Median time to fibrinolysis															
OP-2: Fibrinolytic therapy received within 30 minutes of ED arrival															
OP-3: Median time to transfer to another facility for acute coronary intervention															
OP-4: Aspirin at arrival															
OP-5: Median time to ECG															
OP-6: Prophylactic antibiotic initiated within one hour prior to surgical incision															
OP-7: Prophylactic antibiotic selection for surgical patients															
OP-8: MRI lumbar spine for low back pain															
OP-9: Mammography follow-up rates															
OP-10: Abdomen CT use of contrast material															
OP-11: Thorax CT use of contrast material															
OP-12: Ability for providers with HIT to receive lab data electronically directly into their qualified/certified EHR system as discrete searchable data (CY 2012)															
OP-13: Cardiac imaging for preoperative risk assessment for non-cardiac low-risk surgery (CY 2012)															
OP-14: Simultaneous use of brain CT and sinus CT (CY 2012)															
OP-15: Use of brain CT in the ED for atraumatic headache															
OP-16: ED--Tropin results for AMI or chest pain patients received within 60 minutes of arrival (CY 2013)															
OP-17: Tracking clinical results between visits (CY 2013)															
OP-18: Median time from ED arrival to ED departure for discharged patients (CY 2013)															

Program

Quality Measure	CMS: IPPS for FY 2013	CMS: IPPS for FY 2014	CMS: IPPS for FY 2015	CMS: IPPS for FY 2016	CMS: Outpatient CY 2015	CMS: VBP FY 2013	CMS: VBP FY 2014	CMS: VBP FY 2015	CMS: HAC	CMS: HIT/TECH meaningful use clinical quality measures*	CMS: ACO	CMS: Readmission Reduction Program	CMS: Inpatient Psychiatric FY 2014	CMS: Medicaid	Maine: MQF/ MUHO Ch. 270	Maine: MHMC
OP-19: Transition record with specified elements received by discharged patients (CY 2013)					Suspended March 2012											
OP-20: Door to diagnostic evaluation by qualified medical professional (CY 2013)					X											
OP-21: ED--median time to pain management for long bone fracture (CY 2013)					X											
OP-22: ED--patient left before being seen (CY 2013)					X											
OP-23: ED--head CT scan results for acute ischemic stroke (or hemorrhagic stroke who received head CT scan) within 45 minutes of arrival (CY 2013)					X											
OP-24: ED--Cardiac rehabilitation referral from an outpatient setting (CY 2014)					Deferred											
OP-25: Safe Surgery Checklist use (CY 2014)					X											
OP-26: Outpatient surgery volume (cardiovascular, eye, GI, GU, musculoskeletal skin, nervous system, respiratory) (CY 2014)					X											
Outpatient Measures																
CAHPS: Timely care (NQF #5)											X					
CAHPS: Doctor communication (NQF #5)											X					
CAHPS: Access to specialists (NQF #5)											X					
CAHPS: Rating of doctor (NQF #5)											X					
CAHPS: Health promotion and education (NQF #5)											X					
CAHPS: Shared decision making (NQF #5)											X					
CAHPS 30 question core survey of adult health plan members (NQF #6)											X			X		
NCQA 20 question supplement to CAHPS survey (NQF #7)														X		
Utilization of ambulatory care--outpatient visits and ED (NCQA)																
Medication reconciliation after inpatient discharge (NQF #97)											X					
Annual monitoring for patients on persistent medications (NQF #21)														X		
Proportion of days covered: 5 rates by therapeutic categories (NQF #541)																
Percent of PCPs qualifying for an EHR incentive payment program											X					
Influenza immunization annually for adult patients (NQF #41; PQRS #110)											X					
Influenza immunization annually for adult patients (NQF #39; NCQA)														X		
Pneumococcal vaccine (NQF #43)											X					
Mammography screening (NQF #31; PQRS #112)											X			X		
Cervical cancer screening (NQF #2; NCQA)														X		
Colorectal screening (NQF #34; PQRS #113)											X					
Adult weight screening and follow-up (NQF #421; PQRS #128)											X					
Adult BMI assessment (HEDIS, NCQA)														X		
Blood pressure measurement within 2 years for adults 18+ (CMS)											X					
Chlamydia screening in women age 21-24 (HEDIS, NCQA)														X		
Tobacco use assessment/intervention (NQF #28)											X					
Medical assistance with tobacco cessation (NQF #27; NCQA)														X		
Depression screening and follow-up (NQF #418; PQRS #134)											X			X		
Antidepressant medication management (NQF #105)														X		
Bipolar I Disorder 2: Annual assessment of BMI, glycemic control and lipids (Rand)																
Bipolar I Disorder C: Proportion of patients treated with mood stabilizer medications (Rand)																

Program

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Schizophrenia 2: Annual assessment of BMI, glycemic control and lipids (Rand)															
Adherence to anti-psychotics for individuals with schizophrenia (CMS)													X		
Schizophrenia C: Proportion of selected patients with antipsychotic polypharmacy utilization (Rand)															
Follow-up after hospitalization for mental illness (NQF #576)													X		
Mental health service utilization (NCQA)															
Alcohol misuse screening/intervention (VHA)															
Initiation and engagement of alcohol and other drug dependence treatment (NQF #4; NCQA)													X		
Diabetes: A1c control <8 (NQF #729) all or nothing scoring										X					
Diabetes: A1c poor control >9 (NQF #59)										X					
Diabetes: A1c testing (NQF #57)															
Diabetes: LDL <100 (NQF #729) all or nothing scoring										X			X		
Diabetes: Tobacco non-use (NQF #729) all or nothing scoring										X					
Diabetes: Lipid profile (NQF #63; NCQA)													X		
Diabetes: Aspirin use (NQF #729) all or nothing scoring										X					
Diabetes: Blood pressure control (NQF #729) (OP-27) all or nothing scoring										X					
Heart failure: Beta blockers therapy for LVSD (NQF #83; PQRS #8)										X					
CAD: Drug therapy to lower LDL (NQF #74; PQRS #197) all or nothing scoring										X					
CAD: ACE or ARB therapy for diabetic patients (NQF #66; PQRS #118) all or nothing scoring										X					
IVD: Complete lipid profile and LDL under 100 (NQF #75; NCQA)										X					
IVD: Use of aspirin or another antithrombotic (NQF #68)										X					
Persistent beta blocker therapy for AMI patients (NQF #71; NCQA)										X			X		
Blood pressure control (NQF #18; NCQA)															
Asthma: Use of appropriate medications (NQF #36)													X		
HIV/AIDS: Annual medical visit (NQF #403)															
Falls: Screening for fall risk (NQF #101)										X					
Timely transmission of transition record from facility to next provider (NQF #648; AMA-PCPI)													X		
Low back pain: Use of imaging studies (NQF #52; NCQA)															
X ¹ : Proposed to be added (cells filled with yellow highlight also mark proposals)															
X ² : 8 HCAHPS domains (quiet/cleanliness combined; recommendation)															
X ³ : MQF/MHDO is accepting the applicable CMS metrics for AMI, HF, PN and SCIP and will amend its rule to align with CMS															
X ⁴ : After FY 2015 payment calculation, data period will be flu season; 10/1-3/31															

Program

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* Stage 1 CMS "meaningful use" 14 requirements: CPOE, implement drug interaction/allergy checks, maintain problem list, maintain allergy list, record certain vital signs, record smoking history, report 15 quality measures, implement one clinical decision support rule, provide patients with an e-copy of certain health information & discharge instructions on request, exchange key clinical information among providers, & adequately protect electronic health information. Stage 1 also requires meeting 5 of these 10 objectives: implement drug formulary checks, record advance directives, incorporate lab results into EHR, generate patient lists by conditions, use EHR technology to identify patient-specific education resources, medication reconciliation, provide summary care record for each transition of care, submit electronic data to immunization registries, submit reportable electronic data to state public health agency, & submit syndromic surveillance data to public health agencies. (Stage 1 focus is on data capture; Stage 2 focus on information exchange; Stage 3 focus on achieving improved outcomes.) Stage 2 final rule published August 2012; must meet 16 core objectives plus 3 from the 6 menu objectives and report on 16/29 clinical quality measures from at least 3 of the 6 National Quality Strategy policy domains. The 29 measures finalized for FY 2014 are noted above.														
Hospitals accredited by the Joint Commission are required to collect data for a minimum of four core measure sets or a combination of applicable core measure sets and non-core measures. The core measure sets are the metrics listed above for: Acute Myocardial Infarction (AMI), Children's Asthma Care (CAC), Heart Failure (HF), Surgical Care Improvement Project (SCIP), Pneumonia (PN), Hospital Outpatient Measures (HOP), Perinatal Care (PR), Venous Thromboembolism (VTE), Hospital-Based Inpatient Psychiatric Services (HBIPS), Stroke (STK), Tobacco Use (TOB) and Substance Abuse (SUB). Accredited hospitals are also surveyed for their compliance with the National Patient Safety Goals, which are updated annually. (Free-standing psych must participate in HBIPS)														
GLOSSARY:														
ACO: Accountable Care Organization														
ACSC: ambulatory care sensitive conditions														
AHRQ: Agency for Healthcare Research and Quality (U.S. Department of Health and Human Services)														
CAD: coronary artery disease														
CDC: Centers for Disease Control and Prevention														
CLABSI: central line-associated blood stream infection														
CMS: Centers for Medicare & Medicaid Services														
COPD: chronic obstructive pulmonary disease														
HAC: hospital-acquired condition														
IVD: ischemic vascular disease														
MA: Medicare Advantage														
MDRO: multidrug-resistant organisms														
MHMC: Maine Health Management Coalition														
MQ/MHDO: Maine Quality Forum/Maine Health Data Organization (MHDO web site allows users to calculate AHRQ quality measures)														
NCQA: National Committee for Quality Assurance														
NQF: National Quality Forum														
PQRS: CMS Physician Quality Reporting System														
UAP: unlicensed assistive personnel														
VBP: Value-Based Purchasing														
WHO: World Health Organization														
August 6, 2012														

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CURRENT
LAW

**Maine Revised Statute Title 22, Chapter 1684:
SENTINEL EVENTS REPORTING**

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22 §8751. SENTINEL EVENT REPORTING

There is established under this chapter a system for reporting sentinel events for the purpose of improving the quality of health care and increasing patient safety. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

SECTION HISTORY

2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF).

22 §8752. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

1. Division. "Division" means the Department of Health and Human Services, Division of Licensing and Regulatory Services.

[2009, c. 358, §1 (AMD) .]

2. Health care facility. "Health care facility" or "facility" means a state institution as defined under Title 34-B, chapter 1 or a health care facility licensed by the division, except that it does not include a facility licensed as a nursing facility or licensed under chapter 1664. "Health care facility" includes a general and specialty hospital, an ambulatory surgical facility, an end-stage renal disease facility and an intermediate care facility for persons with ~~mental retardation~~ or developmental disabilities.

intellectual disabilities *Other*
[2009, c. 358, §1 (AMD) .]

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2-A. Immediate jeopardy. "Immediate jeopardy" means a situation in which the provider's noncompliance with one or more conditions of participation in the federal Medicare program has caused, or is likely to cause, serious injury, harm or impairment to or death of a patient.

[2009, c. 358, §1 (NEW) .]

3. Major permanent loss of function. "Major permanent loss of function" means sensory, motor, physiological or intellectual impairment that was not present at the time of admission and requires continued treatment or imposes persistent major restrictions in activities of daily living.

[2009, c. 358, §1 (AMD) .]

3-A. Near miss. "Near miss" means an event or situation that did not produce patient injury, but only because of chance, which may include, but is not limited to, robustness of the patient or a fortuitous, timely intervention.

[2009, c. 358, §1 (NEW) .]

3-B. Root cause analysis. "Root cause analysis" means a structured process for identifying the causal or contributing factors underlying adverse events. The root cause analysis follows a predefined protocol for identifying these specific factors in causal categories.

[2009, c. 358, §1 (NEW) .]

4. Sentinel event.

[2009, c. 358, §1 (RP) .]

4-A. Sentinel event. "Sentinel event" means:

A. An unanticipated death, or patient transfer to another health care facility, unrelated to the natural course of the patient's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility; [2009, c. 358, §1 (NEW).]

B. A major permanent loss of function unrelated to the natural course of the patient's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility that is present at the time of the discharge of the patient. If within 2 weeks of discharge from the facility, evidence is discovered that the major loss of function was not permanent, the health care facility is not required to submit a report pursuant to section 8753, subsection 2; [2009, c. 358, §1 (NEW).]

C. An unanticipated perinatal death or major permanent loss of function in an infant with a birth weight over 2,500 grams that is unrelated to the natural course of the infant's or mother's illness or underlying condition or proper treatment of that illness or underlying condition in a health care facility; and [2009, c. 358, §1 (NEW).]

D. Other serious and preventable events as identified by a nationally recognized quality forum and determined in rules adopted by the department pursuant to section 8756. [2009, c. 358, §1 (NEW).]

[2009, c. 358, §1 (NEW) .]

SECTION HISTORY

RR 2001, c. 2, §A37 (COR). RR 2001, c. 2, §A38 (AFF). 2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2007, c. 324, §17 (REV). 2009, c. 358, §1 (AMD).

22 §8753. MANDATORY REPORTING OF SENTINEL EVENTS

A health care facility shall notify the division whenever a sentinel event has occurred, as provided in this chapter. [2009, c. 358, §2 (AMD).]

1. Notification. A health care facility shall notify the division of a sentinel event by the next business day after the event occurred or the next business day after the facility discovers that the event occurred. The notification must include the date and time of notification, the name of the health care facility and the type of sentinel event pursuant to section 8752, subsection 4-A.

[2009, c. 358, §2 (AMD) .]

2. Reporting. The health care facility shall file a written report no later than 45 days following the notification of the occurrence of a sentinel event pursuant to subsection 1. The written report must be signed by the chief executive officer of the facility and must contain the following information:

A. Facility name and address; [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

B. Name, title and phone number of the contact person for the facility; [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

C. The date and time of the sentinel event; [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

D. The type of sentinel event and a brief description of the sentinel event; and [2009, c. 358, §2 (AMD) .]

E. [2009, c. 358, §2 (RP) .]

F. [2009, c. 358, §2 (RP) .]

G. [2009, c. 358, §2 (RP) .]

H. A thorough and credible root cause analysis. A root cause analysis is thorough and credible only in accordance with the following.

(1) A thorough root cause analysis must include: a determination of the human and other factors most directly associated with the sentinel event and the processes and systems related to its occurrence; an analysis of the underlying systems and processes to determine where redesign might reduce risk; an inquiry into all areas appropriate to the specific type of event; an identification of risk points and their potential contributions to the event; a determination of potential improvement in processes or systems that would tend to decrease the likelihood of such an event in the future or a determination, after analysis, that no such improvement opportunities exist; an action plan that identifies changes that can be implemented to reduce risks or formulates a rationale for not undertaking such changes; and, where improvement actions are planned, an identification of who is responsible for implementation, when the action will be implemented and how the effectiveness of the action will be evaluated.

(2) A credible root cause analysis must include participation by the leadership of the health care facility and by the individuals most closely involved in the processes and systems under review, is internally consistent without contradictions or unanswered questions, provides an explanation for all findings, including those identified as "not applicable" or "no problem," and includes the consideration of any relevant literature.

(3) The root cause analysis submitted to the division may exclude protected professional competence review information pursuant to the Maine Health Security Act. [2009, c. 358, §2 (NEW) .]

[2009, c. 358, §2 (AMD) .]

3. Cooperation. A health care facility that has filed a notification or a report of the occurrence of a sentinel event under this section shall cooperate with the division as necessary for the division to fulfill its duties under section 8754.

[2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

4. Immunity. A person who in good faith reports a near miss, a suspected sentinel event or a sentinel event or provides a root cause analysis pursuant to this chapter is immune from any civil or criminal liability for the act of reporting or participating in the review by the division. "Good faith" does not include instances when a false report is made and the person reporting knows the report is false. This subsection may not be construed to bar civil or criminal action regarding perjury or regarding the sentinel event that led to the report.

[2009, c. 358, §2 (AMD) .]

5. Near miss notification. A health care facility may notify the division of the occurrence of a near miss. Should a facility report a near miss, the notification must include the date and time of notification, the name of the health care facility and the type of event or situation pursuant to section 8752, subsection 4-A that is related to the near miss.

[2009, c. 358, §2 (NEW) .]

SECTION HISTORY

2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2009, c. 358, §2 (AMD) .

22 §8753-A. STANDARDIZED PROCEDURE

A health care facility shall have a written standardized procedure for the identification of sentinel events. The division shall develop the standardized reporting and notification procedures by adoption of routine technical rules under Title 5, chapter 375, subchapter 2-A. [2009, c. 358, §3 (NEW).]

SECTION HISTORY

2009, c. 358, §3 (NEW).

22 §8754. DIVISION DUTIES

The division has the following duties under this chapter. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

1. Initial review; other action. Upon receipt of a notification or report of a sentinel event, the division shall complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. Upon receipt of a notification or report of a suspected sentinel event the division shall determine whether the event constitutes a sentinel event and complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. The division may conduct on-site reviews of medical records and may retain the services of consultants when necessary to the division.

A. The division may conduct on-site visits to health care facilities to determine compliance with this chapter. [2009, c. 358, §4 (NEW).]

B. Division personnel responsible for sentinel event oversight shall report to the division's licensing section only incidences of immediate jeopardy and each condition of participation in the federal Medicare program related to the immediate jeopardy for which the provider is out of compliance. [2009, c. 358, §4 (NEW).]

[2009, c. 358, §4 (AMD) .]

2. Procedures. The division shall adopt procedures for the reporting, reviewing and handling of information regarding sentinel events. The procedures must provide for electronic submission of notifications and reports.

[2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF) .]

3. Confidentiality. Notifications and reports filed pursuant to this chapter and all information collected or developed as a result of the filing and proceedings pertaining to the filing, regardless of format, are confidential and privileged information.

A. Privileged and confidential information under this subsection is not:

(1) Subject to public access under Title 1, chapter 13, except for data developed from the reports that do not identify or permit identification of the health care facility;

(2) Subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity; or

(3) Admissible as evidence in any civil, criminal, judicial or administrative proceeding. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

B. The transfer of any information to which this chapter applies by a health care facility to the division or to a national organization that accredits health care facilities may not be treated as a waiver of any privilege or protection established under this chapter or other laws of this State. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

C. The division shall take appropriate measures to protect the security of any information to which this chapter applies. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

D. This section may not be construed to limit other privileges that are available under federal law or other laws of this State that provide for greater peer review or confidentiality protections than the peer review and confidentiality protections provided for in this subsection. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

E. For the purposes of this subsection, "privileged and confidential information" does not include:

- (1) Any final administrative action;
- (2) Information independently received pursuant to a 3rd-party complaint investigation conducted pursuant to department rules; or
- (3) Information designated as confidential under rules and laws of this State. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

This subsection does not affect the obligations of the department relating to federal law.

[2009, c. 358, §5 (AMD) .]

4. Report. The division shall submit an annual report by February 1st each year to the Legislature, health care facilities and the public that includes summary data of the number and types of sentinel events of the prior calendar year by type of health care facility, rates of change and other analyses and an outline of areas to be addressed for the upcoming year.

[2009, c. 358, §6 (AMD) .]

SECTION HISTORY

2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2009, c. 358, §§4-6 (AMD) .

22 §8755. COMPLIANCE

1. Oversight. The division shall place primary emphasis on ensuring effective corrective action by the facility.

[2009, c. 358, §7 (NEW) .]

2. Penalties. When the division determines that a health care facility failed to report a sentinel event pursuant to this chapter, the health care facility is subject to a penalty imposed in conformance with Title 5, chapter 375, subchapter 4 and payable to the State of not more than \$10,000 per violation. If the facility in good faith notified the division of a suspected sentinel event and the division later determines it is a sentinel event, the facility is not subject to a penalty for that event. Funds collected pursuant to this section must be deposited in a dedicated special revenue account to be used to support sentinel event reporting and education.

[2009, c. 358, §7 (NEW) .]

3. Administrative hearing and appeal. To contest the imposition of a penalty under this section, a health care facility must submit to the division a written request for an administrative hearing within 10 days of notice of imposition of a penalty pursuant to this section. Judicial appeal must be in accordance with Title 5, chapter 375, subchapter 7.

[2009, c. 358, §7 (NEW) .]

4. Injunction. Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of this chapter.

[2009, c. 358, §7 (NEW) .]

5. Enforcement. The Office of the Attorney General may file a complaint with the District Court seeking injunctive relief for violations of this chapter.

[2009, c. 358, §7 (NEW) .]

SECTION HISTORY

2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF). 2009, c. 358, §7 (RPR).

22 §8756. RULEMAKING

The department shall adopt rules to implement this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [2001, c. 678, §1 (NEW); 2001, c. 678, §3 (AFF).]

SECTION HISTORY

2001, c. 678, §1 (NEW). 2001, c. 678, §3 (AFF).

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Public Records Exceptions Subcommittee
Proposed Draft
(no specific protection for trade secrets, remove 50-mile radius)

TITLE 22
CHAPTER 271
HEALTH PROGRAMS

SUBCHAPTER 2
COMMUNITY HEALTH INVESTIGATION AND INFORMATION

22 §1696-A. Findings and intent

The Legislature finds and declares that the proliferation of hazardous substances in the environment poses a growing threat to the public health, safety and welfare; that the constantly increasing number and variety of hazardous substances, and the many routes of exposure to them make it difficult and expensive to adequately monitor and detect any adverse health effects attributable to them; that individuals are often able to detect and thus minimize effects of exposure to hazardous substances if they are aware of the identity of the substances and the early symptoms of unsafe exposure; and that individuals have an inherent right to know the full range of the risks they face so that they can make reasoned decisions and take informed actions concerning their employment and their living conditions.

The Legislature further declares that accidental releases of hazardous materials pose a threat to public health and safety and that there are serious questions concerning the State's ability to respond to these emergencies in a coordinated and effective manner; and that local health, fire, police, safety and other government officials require information about the identity, characteristics and quantities of hazardous substances used and stored in communities within their jurisdictions, in order to adequately plan for, and respond to, emergencies and enforce compliance with applicable laws and rules concerning these substances.

The Legislature further declares that the extent of the toxic contamination of the air, water, and land in this State has caused a high degree of concern among its residents; and that much of this concern is needlessly aggravated by the unfamiliarity of these substances to residents.

The Legislature determines that it is in the public interest for the State to examine its emergency response mechanisms and procedures for accidents involving hazardous materials, to establish a comprehensive program for the disclosure of information about hazardous substances in the community and to provide a procedure whereby residents of this State may gain access to this information.

Public Records Exceptions Subcommittee

Proposed Draft

(no specific protection for trade secrets, remove 50-mile radius)

22 §1696-B. Short title

This subchapter may be cited as the "Community Right-to-Know Act."

22 §1696-C. Community health information project

The department shall undertake a community health information project under the auspices of the Environmental Health Program in the Bureau of Health. The project shall respond, subject to this subchapter, to requests made by state agencies, municipalities or individuals for information on potential health hazards posed by the use of hazardous chemicals. To meet these requests, the director shall establish a Community Health Information Clearinghouse which shall contain information on the health implications of chemicals in use in the home and the workplace.

22 §1696-D. Response to requests

When requested under this subchapter, the director shall provide, ~~at a minimum, the identity of information about~~ chemical substances in use or present at a specific location, ~~unless the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it.~~ The director ~~may provide information on~~ must include the identity of the chemical substance, the chronic and acute health hazards posed by the substance, potential routes of exposure, emergency procedures and other subjects as appropriate. The director shall report in writing annually by January 1st to the joint standing committee of the Legislature having jurisdiction over human resources on the number and type of requests received and on the director's response to these requests.

~~In the case of a request for information from a municipality or individual concerning chemicals in use or present at a specific site, the director shall be required to provide information pursuant to this Act only if the specific site is within a 50-mile radius of the municipality or within a 50-mile radius of a residence of the individual requesting the information.~~

22 §1696-E. Cooperation with state agencies

Public Records Exceptions Subcommittee

Proposed Draft

(no specific protection for trade secrets, remove 50-mile radius)

The director may obtain, upon request, information from and the assistance of the Bureau of Labor Standards, Department of Environmental Protection, Bureau of Pesticides Control and other state agencies as appropriate in the conduct of investigations under this chapter. ~~Information obtained under this section shall be subject to the trade secret provisions governing the agencies supplying the information.~~

22 §1696-F. Provision of information; ~~trade secrets~~

~~A person may withhold the identity of a specific toxic or hazardous substance, if the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it. All other information about a toxic or hazardous substance, including its identity, routes of exposure, effects of exposure, type and degree of hazard and emergency treatment and response procedures, must be provided if requested by the Director of the Bureau of Health and is considered a public record. All information about a toxic or hazardous substance is a public record.~~

SUMMARY

These amendments clarify that all the information provided upon request to the Director of the Bureau of Health about toxic or hazardous substances in use or present at a specific location are public. These amendments require the director to release the information that is public upon request to any requester, and repeal the requirement that the requester reside within 50 miles of the specific location.

G:\STUDIES 2012\Right to Know Advisory Committee\Existing Public Records Exceptions Review\Community right to know act draft for Sept 13.doc (8/31/2012 11:30:00 AM)



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STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY GAMING & WEAPONS SECTION
164 STATE HOUSE STATION, AUGUSTA, MAINE 04333-0164
(207) 624-7210

Application for Contract Security Company License

Application Fee - New: \$121.00 (\$100.00 plus \$21.00 for Background Check) Upon Issuance of License \$300.00

Application Fee - Renewal: \$221.00 (\$200.00 plus \$21.00 for Background Check)

(Make Checks Payable to Treasurer, State of Maine)

Full Name (Last, First, Middle)(Please Print)			Date of Birth		Place of Birth	
Complete Physical Address			SSN		Telephone #	
City or Town		State	Zip Code		High School Graduate or High School Equivalency Yes <input type="checkbox"/> No <input type="checkbox"/>	
Complete Mailing Address					Citizen or Resident Alien of the United States Yes <input type="checkbox"/> No <input type="checkbox"/>	
City or Town		State	Zip Code		FOR OFFICE USE ONLY Case Number _____ Check Number _____ Check Amount _____	
Eyes	Height	Weight				
Resident Alien Number		Federal ID Number				
				New		Renewal

List Addresses for the Last 5 Years (If More Space is Needed use a Plain Sheet of Paper)

Address	Dates

Name of Company			Name of DBA		
Company's Physical Address			DBA Physical Address		
City or Town	State	Zip Code	City or Town	State	Zip Code
Company's Mailing Address			DBA Mailing Address		
City or Town	State	Zip Code	City or Town	State	Zip Code
Company's Telephone Number			DBA Telephone Number		

List of Previous Issuances of a Contract Security Company License by any Issuing Authority

List of Previous Refusals to Issue or Renew; Suspension or Revocations of any Contract Security Company License by any Issuing Authority

Check Appropriate Box After Each Question

1. Are you less than 18 years of age? Yes ☐ No ☐
 2. Is there a formal charging instrument now pending against you in this or any other jurisdiction for a crime which is punishable by one year or more imprisonment or for any other crime alleged to have been committed by you with the use of a dangerous weapon, as defined in 17-A MRSA § 2(9), or of a firearm against another person? Yes ☐ No ☐
 3. Is there a formal charging instrument now pending against you in this or any other jurisdiction for a juvenile offense which involves conduct which, if committed by an adult, would be punishable by one year or more imprisonment or for any juvenile offense alleged to have been committed by you with the use of a dangerous weapon, as defined in 17-A MRSA § 2(9), or of a firearm against another person? Yes ☐ No ☐
 4. Have you been convicted of a crime described in question 2 or adjudicated as having committed a juvenile offense as described in question 3? Yes ☐ No ☐
 5. Are you a fugitive from justice? Yes ☐ No ☐
 6. Are you a drug abuser [defined in 32 MSRA § 9403(3-E)] or drug addict [defined in 32 MSRA § 9403(3-C)] or drug dependent person [defined in 32 MSRA § 9403(3-D)]? Yes ☐ No ☐
- NOTE: Definition of drug dependent person does not include a person who is able to function effectively as the result of taking prescription or other drugs, such as a diabetic who is able to function effectively as the result of taking insulin.
7. Do you have a mental disorder which causes you to be potentially dangerous to yourself or others? Yes ☐ No ☐
 8. Have you been adjudicated to be an incapacitated person [defined in 18-A MRSA § 5-101(1)] pursuant to Title 18-A, Article V, Parts 3 and 4, and not had that designation removed by an order under Title 18-A, Section 5-307, Subsection (b)? Yes ☐ No ☐
 9. Have you been dishonorably discharged from the military forces within the past 5 years? Yes ☐ No ☐
 10. Are you an illegal alien? Yes ☐ No ☐
 11. Is there a formal charging instrument now pending against you in this jurisdiction for any crime enumerated in section 9412? Yes ☐ No ☐
 12. Is there a formal charging instrument now pending against you in this jurisdiction for a juvenile offense which involves conduct which if committed by an adult, would be a crime enumerated in section 9412? Yes ☐ No ☐
 13. Have you within the past 5 years been convicted of a crime described in question 11 or adjudicated of having committed a juvenile offense described in question 12? Yes ☐ No ☐
 14. Within the past 5 years have you been the subject of an investigation by any law enforcement agency regarding the alleged abuse by you of family or household members? Yes ☐ No ☐
 15. Within the past 5 years have you been convicted of 3 or more crimes punishable by less than one year imprisonment? Yes ☐ No ☐
 16. Within the past 5 years have you been adjudicated to have committed 3 or more juvenile offenses involving conduct which if committed by an adult, would be punishable by less than one year imprisonment? Yes ☐ No ☐
 17. Within the past 5 years have you been adjudicated of 3 or more civil violation? Yes ☐ No ☐
 18. Within the past 5 years has your license as a contract security company been suspended pursuant to section 9411-A? Yes ☐ No ☐
 19. Within the past 5 years have you engaged in reckless or negligent conduct, as defined in 32 MSRA § 9403(8-A), which has been the subject of an investigation by a government entity? Yes ☐ No ☐

Initials: _____

BY AFFIXING YOUR SIGNATURE BELOW AS THE APPLICANT YOU:

A. Certify that the statements you have made in this application, including Addendum A, and any documents you have made a part of this application, are true and correct.

B. Certify that you understand that an affirmative answer to question 1, question 13, or any of the questions numbered 4 through 10 is cause for refusal.

C. Certify that you understand that any false statements made in either this application, including Addendum A, or any documents you have made part of this application may result in criminal prosecution as provided in section 9412, subsection 1, paragraph D.

D. Certify that you understand that at the request of the commissioner or his designee you are required and certify that you are willing to take whatever action is required of you by law to allow the commissioner or his designee to obtain from: hospitals and mental institutions either within or outside the State, limited to records of involuntary commitments; law enforcement agencies; and the military, information relevant to the following:

1. The ascertainment of whether the information supplied in the application or any documents made a part of the application is true and correct;
2. The ascertainment of whether each of the additional requirements of section 9405 has been met and
3. Section 9411-A.

E. Certify that you understand that since a photograph is an integral part of the application process, you will submit a photograph of yourself taken within six months of the date of this application.

F. Certify that you understand that if it becomes necessary to resolve any questions as to your identity, you will submit to having your fingerprints taken by the commissioner or his designee.

G. Certify that you have received a copy of the pamphlet entitled "Laws Relating to Private Security Guards" dated May 2009, issued by the Bureau of Maine State Police.

Under penalties of perjury, I certify that the statements in this written application and any documents made a part thereof are, to the best of my knowledge and belief, true, correct and complete.

Signature

Date



Authority, pursuant to 32 M.R.S. §§ 9405(1-A)(G)(1) and 9405(4), to release information to the Commissioner or his/her designee for the purpose of evaluating information supplied on the application for a Contract Security Company License.

To all law enforcement agencies and courts, either within or outside the State of Maine:

I hereby authorize and direct you to release to the Commissioner of Public Safety or his/her designee bearing this release, a copy thereof, within six months of the date appearing below, any information in your possession or control concerning me pertaining to the following:

1. conviction data;
2. any criminal matter in which a formal charging instrument is now pending;
3. adjudication data within the past 5 years relating to any civil violation;
4. fugitive from justice status;
5. incidents of abuse of family or household members within the past 5 years;
6. unlawful use of, or addiction to, marijuana or any other drug;
7. reckless or negligent conduct within the past 5 years.

To all military forces, both State and Federal:

I hereby authorize and direct you to release to the Commissioner of Public Safety or his/her designee bearing this release, or a copy thereof, within 6 months of the date appearing below, any information in your possession or control concerning me pertaining to a dishonorable discharge from the military forces.

To the Justice Department, Immigration and Naturalization Service:

I hereby authorize and direct you to release to the Commissioner of Public Safety or his/her designee bearing this release, or a copy thereof, within 6 months of the date appearing below, any information in your possession or control concerning me pertaining to being an illegal alien.

To all hospitals and mental institutions wither within or outside the State of Maine:

I hereby authorize and direct you to release to the Commissioner of Public Safety or his/her designee bearing this release, or a copy thereof, within 6 months of the date appearing below any information, if contained within your records, pertaining to being adjudged to be mentally defective or committed to a mental institution within the past 5 years.

(Check appropriate box below)

I wish to review this material prior to its release: ☐

I do not wish to review this material prior to its release: ☐

To all above addressed governmental entities:

I hereby authorize and direct you to release to the Commissioner of Public Safety or his/her designee bearing this release, or a copy thereof, within 6 months of the date appearing below any information to your possession or control concerning me pertaining to the following:

1. my full name;
2. my full current address and addresses for the prior 5 years;
3. the date and place of my birth any my physical description;
4. my signature

Should there be any questions as to the validity of this release, you may contact me at the address and/or telephone number listed below.

Full Name (Last, First, Middle)(Please Print)	Date of birth	
Complete Physical Address	Telephone #	
City or Town	State	Zip Code
Complete Mailing Address		
City or Town	State	Zip Code
Signature of Applicant	Date	
Signature of Witness	Date	

All information obtained pursuant to this release is confidential by virtue of 32 M.R.S. § 9418 and may not be made available for public inspection or copying by the Commissioner or his/her designee unless the confidentiality is waived by this applicant by written notice to the Commissioner.

Reinsch, Margaret

From: Cianchette, Michael <Michael.Cianchette@maine.gov>
Sent: Friday, August 31, 2012 2:47 PM
To: Reinsch, Margaret
Cc: McCarthyReid, Colleen; Bentley, Curtis; Plummer, Judy; Billings, Dan
Subject: RE: RTK AC - confidentiality for the Parole Board

Peggy,

Thanks for this. There are a few different pieces to your question, so I'll try to address them:

1. Why should the report containing recommendations be confidential?

The primary reason is the uniqueness of the Executive Clemency power. With the Constitutional Amendments doing away with the Executive Council, the clemency power is plenary and discretionary. A Governor could grant reprieves for every person convicted of theft on a Friday if he or she so chose. Instead, governors back to at least Gov. McKernan have had a board to perform the role formerly played by the Executive Council. To ensure that the Governor and the Board are fully informed as to the circumstances, history, and sentiment of a particular petition or petitioner, Corrections conducts a thorough background investigation. Portions of the background investigation report include statutorily-defined confidential information (e.g. non-conviction data (16 MRSA §613)), public policy-driven confidential information (e.g. victim's statements and community interviews), and public records (e.g. charging instruments).

In order for a Governor to be fully informed before he or she exercises this extraordinary power, it is essential that he or she has all this information available. Further, while narrowing the exception to include portions of the report could likely be done, there are other means available to information seekers to obtain the public records (Archives, Court system, etc.).

2. Should the exception be extended to the Executive Clemency Board?

While I agree with Judy that the exception should apply to the advisory board, I don't think legislative action is necessary. Again, because the Clemency power is plenary, the report is furnished to the Governor by DOC. The Governor, per his prerogative, then refers it to the Board for review. Nevertheless, the documents remain legally in the custody of the Governor and the exception would apply.

3. How is public access protected by the current system?

Again, the Constitution does not envision any role for public participation in the use of the clemency power. However, as noted, governors have constituted advisory boards to assist as the Executive Council once did. These advisory boards have had a two step process: first, they meet in executive session and review petitions, dismissing some outright. The others are granted a hearing. Those hearings are open to the public and advertised in a newspaper of general circulation where the crime occurred. Thus, if any member of the public or media wanted to witness the arguments made for/against a pardon, they are free to do so. Of course, this is not binding, so a future Governor could change this practice.

Hope that clarifies some of the process. Let me know if you have further questions. Happy to speak to the subcommittee if they'd like.

Thanks,

Mike

Michael J. Cianchette
Office of the Governor
[Direct] (207) 287-3543

From: Reinsch, Margaret [mailto:Margaret.Reinsch@legislature.maine.gov]
Sent: Friday, August 31, 2012 11:54 AM
To: Cianchette, Michael
Cc: McCarthyReid, Colleen; Bentley, Curtis; Plummer, Judy
Subject: RTK AC - confidentiality for the Parole Board

Hi, Mike –

The Public Records Exceptions Subcommittee review Title 34-A, section 5210, subsection 4, paragraph C and has some questions. Can you help?

The central question is really what information is paragraph C covering – it seems very broad. Specifically, why would the report itself – which would contain recommendations – be confidential?

Also, Judy Plummer at the Department of Corrections, who did a great job completing all the questionnaires for that Department, raised another question, which is that there are other entities that provide similar information to the Governor; shouldn't they be covered? Her questionnaire response is attached.

Any guidance you can provide us would be most appreciated.

Thanks!
Peggy and Colleen and Curtis

<< File: 45.pdf >>

§5210. Duties

The board shall: [1983, c. 459, §6 (NEW).]

- 1. Time of parole.** Determine the time of parole for each committed offender;
[1983, c. 459, §6 (NEW) .]
 - 2. Parole revocation.** Revoke parole when warranted due to a parole violation;
[1983, c. 459, §6 (NEW) .]
 - 3. Discharge from parole.** Determine the time of discharge of parolees from parole supervision; and
[1983, c. 459, §6 (NEW) .]
 - 4. Advice to Governor.** When requested by the Governor, advise him concerning applications for pardon, reprieve or commutation.
 - A. The board shall hold hearings, cause an investigation to be made and collect records to determine the facts and circumstances of a committed offender's crime, his past criminal record, his social history and his physical and mental condition as may bear on the application. [1983, c. 459, §6 (NEW).]
 - B. The board shall make recommendations regarding action by the Governor on the application. [1983, c. 459, §6 (NEW).]
 - C. All information obtained under this subsection, and any report furnished to the Governor under this subsection, is confidential. [1983, c. 459, §6 (NEW).]
[1983, c. 459, §6 (NEW) .]
- SECTION HISTORY

1983, c. 459, §6 (NEW).

Margaret J. Reinsch, Esq., Legislative Analyst
Joint Standing Committee on Judiciary
Maine State Legislature
Office of Policy and Legal Analysis
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Augusta, Maine 04333
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Public Records Exceptions Subcommittee
Proposed Draft (2-3 Minority Report)
(Repeal confidentiality for Public Private Partnership records)

Title 23: HIGHWAYS
Part 5: DEPARTMENT OF TRANSPORTATION
Chapter 410: DEPARTMENT OF TRANSPORTATION
Subchapter 5: PUBLIC-PRIVATE PARTNERSHIPS

§4251. Public-private partnerships; transportation projects

1. Definitions. As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Agreement" means a contract between the department and a private entity to create a public-private partnership that allows for private sector participation in the financing, development, operation, management, ownership, leasing or maintenance of a transportation facility and that sets forth rights and obligations of the department and the private entity in that partnership.

B. "Project" means the initial capital development of a transportation facility.

C. "Proposal" means a conditional offer of a private entity that, after review, negotiation, documentation and legislative approval, may lead to an agreement as provided in this subchapter.

D. "Transportation facility" means a facility that is or if developed would be within the jurisdiction of the department including a highway, bridge, railroad line, pier, airport, trail, ferry vessel, building or other improvement. [

2. Applicability. This subchapter applies to a proposal or agreement for a private entity to form a public-private partnership when the department estimates that the initial capital cost of a project is \$25,000,000 or more or when the proposal includes placing tolls on existing transportation facilities that were not previously subject to tolls. Nothing in this section is intended to prohibit or otherwise affect programs that do not meet the criteria of this subsection.

3. Authorization. Notwithstanding any other provision of law, the department is authorized to receive or solicit proposals to form a public-private partnership with respect to a transportation facility. Proposals must be reviewed in accordance with this subchapter. Upon approval of the Legislature as provided in this subchapter, the department may enter into an agreement.

Public Records Exceptions Subcommittee

Proposed Draft (2-3 Minority Report)

(Repeal confidentiality for Public Private Partnership records)

4. Standards for review. Before submitting a proposal to the Legislature for approval the department must find that the proposal meets the following standards.

- A. The purpose of and need for the transportation facility must be consistent with the long-term planning of the department.
- B. The private entity must have the financial, technical and operational capacity to discharge the responsibilities set forth in the proposal cost-effectively and responsibly as determined by the department. This capacity must include, but is not limited to, meeting department prequalification standards for professional engineering services and general contracting.
- C. The proposed transportation facility must be owned, controlled, operated and maintained in a manner satisfactory to the department.
- D. The proposal must be cost-effective in the long term.
- E. The proposal must limit the use of state capital funding to less than 50% of the initial capital cost of the transportation facility and to the extent practicable minimize the use of transportation funding sources such as the Highway Fund, general obligation bonds supported by the Highway Fund, the TransCap Trust Fund under Title 30-A, section 6006-G and program funding provided by the Federal Highway Administration.
- F. If the proposed transportation facility is to be supported by tolls or other user fees, the private entity must provide a traffic and revenue study prepared by an expert acceptable to the department and national bond rating agencies. The private entity must also provide a finance plan consistent with the traffic and revenue study that identifies the proposal costs, revenues by source, financing, major assumptions, internal rate of return on private investments and whether any government funds are assumed to deliver a cost-feasible project and that provides a total cash flow analysis beginning with implementation of the project and extending for the term of the agreement.
- G. The proposal must demonstrate safeguards adequate to ensure that no significant additional costs or service disruptions would be borne by the traveling public and residents of the State if the private entity defaults or cancels the agreement.
- H. The proposal must include a provision that any contractor performing construction work required by the agreement must furnish performance and

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Proposed Draft (2-3 Minority Report)
(Repeal confidentiality for Public Private Partnership records)

payment bonds or irrevocable letters of credit in an amount equal to the cost of the construction work. Any action on such a payment bond or irrevocable letter of credit is subject to the requirements of Title 14, section 871, subsection 4.

I. The proposal and the transportation facility must comply with all requirements of applicable federal, state and local laws and department rules, policies and procedures.

J. The proposal must identify the law enforcement jurisdictions and responsibilities relative to the transportation facility.

K. The proposal must provide that all reasonable costs of substantially affected local governments and utilities related to the transportation facility are borne by the private entity or are otherwise provided for to the satisfaction of the department.

L. The proposal and transportation facility are in the best interest of the public. [

5. Proposal and selection processes; solicited and unsolicited. The department may request proposals from private entities for a public-private partnership for a transportation facility or may accept unsolicited proposals pursuant to this subsection.

A. If the department receives an unsolicited proposal and determines that it meets the standards in this subchapter, the department shall publish a notice of the receipt of the proposal on the department's publicly accessible website or through advertisements in newspapers. If a notice is published exclusively in newspapers, the notice must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed transportation facility is to be located if any such newspaper is circulated in that county. The notice must provide that the department will accept, for 120 days after the initial date of publication, proposals meeting the standards in subsection 4 from other private entities for transportation facilities that satisfy the same basic purpose and need. A copy of the notice must be mailed to each local government in the area affected by the proposal.

B. After the proposal or proposals have been received, and any public notification period has expired, the department shall rank the proposals in order of preference. In ranking the proposals, the department may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans and the need for state funds to deliver the project and discharge the agreement. The department shall undertake

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negotiations with the private entity submitting the 1st-ranked proposal. If the department is not satisfied with the results of the negotiations, the department may, at its sole discretion, terminate negotiations with that entity and the department may negotiate with the other entities in order of the ranking of their proposals. If only one proposal is received, the department shall negotiate in good faith and, if the department is not satisfied with the results of the negotiations, the department may, at its sole discretion, terminate negotiations.

C. The department may require that the private entity assume responsibility for all costs incurred by the State or local governments before execution of the agreement, including costs of retaining independent experts to review, analyze and advise the department with respect to the proposal.

6. Tolls; fares. An agreement may authorize the private entity to impose tolls or fares for the use of the transportation facility. The following provisions apply to such an agreement.

A. The agreement must be consistent with the traffic and revenue study required under subsection 4, paragraph F.

B. The agreement must ensure that the transportation facility and any related toll facility are properly operated and maintained in accordance with department standards or standards generally accepted in the transportation industry.

C. The agreement must include provisions governing changes in tolls or fares.

D. The department may require provisions in the agreement that ensure that a negotiated portion of revenues from a toll-generating or a fare-generating transportation facility is returned to the department over the life of the agreement.

7. Exercise of powers. If the department exercises its power of eminent domain for the development and construction of a transportation facility pursuant to this subchapter, the department must retain ownership rights and interests taken. The State may provide maintenance, law enforcement and other services with respect to a transportation facility owned by a private entity when the agreement provides for reasonable reimbursement for such services.

8. Term of agreement. An agreement may not exceed a term of 50 years unless the Legislature, upon the recommendation of the Commissioner of Transportation, approves a longer term.

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9. Legislative approval. If the department determines that a public-private partnership proposal and draft agreement meets the standards of this subchapter, the department shall submit to the Legislature a bill that authorizes the agreement. The bill must include a statement that the proposal meets the standards in subsection 4, a summary of the substance of the draft agreement and a description of the nature and amount of state investment, if any, including effects on programmed capital work.

10. Confidentiality of proposals and negotiations. All records, notes, summaries, working papers, plans, interoffice and intraoffice memoranda or other materials prepared, used or submitted in connection with any proposal considered under this subchapter are ~~confidential and not subject to public review until the department determines that the proposal meets the standards of this subchapter or until the proposal is finally rejected by the department~~ public records for the purposes of Title 1, chapter 13, subchapter 1.

11. Report of proposals. By February 1st, annually, the department shall provide to the joint standing committee of the Legislature having jurisdiction over transportation matters a report summarizing all proposals that the department has determined meet the standards of this subchapter or that have been finally rejected during the previous calendar year.

12. Rules. The department may adopt rules to implement this subchapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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